



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

March 01, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

27 March 1, 2011

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**USE AGREEMENT BETWEEN
THE COUNTY OF LOS ANGELES AND
THE CITY OF MALIBU
WEBB WAY AT PACIFIC COAST HIGHWAY
ASSESSOR'S IDENTIFICATION NOS. 4458-020-900 AND 901
IN THE CITY OF MALIBU
(SUPERVISORIAL DISTRICT 3)
(3 VOTES)**

SUBJECT

This action is to approve a Use Agreement for landscaping purposes between the County of Los Angeles and the City of Malibu in the City of Malibu.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Acting as the responsible agency, find that this project is categorically exempt from the provisions of the California Environmental Quality Act.
2. Find that the proposed 25-year Use Agreement between the County of Los Angeles and the City of Malibu for landscaping purposes on Assessor's Identification Nos. 4458-020-900 and 901 in the City of Malibu will not interfere with the primary purposes of the County of Los Angeles.
3. Instruct the Mayor, Board of Supervisors of the County of Los Angeles to sign the Use Agreement and authorize delivery to the City of Malibu.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to obtain approval from your Board to enter into a Use Agreement between the County of Los Angeles (County) and the City of Malibu (City), for Assessor's Identification Nos. 4458-020-900 and 901. The property is currently vacant, and the City proposes to install and maintain certain improvements in connection with the City's Legacy Park project.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Community and Municipal Services (Goal 3). The improvements will enhance highway aesthetics and recreational opportunities in the area, thereby improving the quality of life for the residents of the County.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

There will be no monetary consideration paid for the Use Agreement provided the use of the County property is for landscaping purposes, in connection with the City's Legacy Park project.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Assessor's Identification Nos. 4458-020-900 and 901 are located at the northwesterly and northeasterly corners of Pacific Coast Highway and Webb Way in the City of Malibu.

The Use Agreement is for 25 years.

This conveyance is authorized by and in compliance with Government Code Section 25526.7 and Article XIX, Section 8 of the California Constitution. The Use Agreement has been reviewed and approved by County Counsel as to form.

ENVIRONMENTAL DOCUMENTATION

This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) as specified in Section 15304(b) of the CEQA Guidelines and in Class 4(c) of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987. These exemptions provide for landscaping.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This action allows for the use and enjoyment of the County's excess land by the public without interfering with the primary mission of the County.

CONCLUSION

The Honorable Board of Supervisors
3/1/2011
Page 3

Please return one adopted copy of this letter and two executed Use Agreements to the Department of Public Works, Survey/Mapping & Property Management Division.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER
Director

GF:SGS:hp

Enclosures

c: Auditor-Controller (Accounting Division - Asset
Management)
Chief Executive Office (Rita Robinson)
County Counsel
Executive Office

USE AGREEMENT NO. _____
WEBB WAY @ PACIFIC COAST HIGHWAY
PARCELS 4458-020-900 & 901
THOMAS GUIDE PAGE NO. 628-J7
3RD DISTRICT

USE AGREEMENT

This Use Agreement is entered into by and between the

COUNTY OF LOS ANGELES,
a body corporate and politic,

herein referred to as "COUNTY"

And

CITY OF MALIBU,
a municipal corporation

herein referred to as "USER"

RECITALS

The COUNTY owns the fee title for those certain properties generally located at the northwesterly and northeasterly corner of Pacific Coast Highway and Webb Way, in the City of Malibu, State of California, as more particularly as shown cross hachured on Exhibit A, attached hereto, and made a part hereof hereunder referred to as PREMISES; and

USER proposes to use the PREMISES for landscaping purposes, in connection with the USER's project known as the Legacy Park Project; and

USER proposes to install and maintain certain improvements on PREMISES in connection with the Legacy Park Project, specifically including: landscaping, an irrigation system, and in general to beautify the PREMISES hereinafter referred to as "IMPROVEMENTS";

NOW THEREFORE, in consideration of the promises and faithful performance by USER and COUNTY of mutual covenants herein contained, for the period of time herein set forth, the COUNTY and USER hereto mutually agree as follows:

77484

SECTION 1. Authorized Use

- 1.1. USER is authorized and permitted to use PREMISES for the landscaping, irrigation system, and beautification, in accordance with the terms and conditions of this Use Agreement. Any other use of PREMISES by USER is expressly prohibited.
- 1.2. USER acknowledges that portions of the PREMISES are rented to Keep Christ in Christmas and Chabad of Malibu, hereinafter referred to as "TENANTS" for displaying holiday greeting signs during the holiday season. USER shall ensure that the PREMISES remain available to TENANTS as set forth in their Rental Agreement, a copy of which will be provided to USER.

SECTION 2. Construction and Maintenance of Improvements

- 2.1. USER understands and acknowledges that it is required to comply with the requirements set forth in the California Environmental Quality Act (CEQA) and the State CEQA guidelines prior to implementing IMPROVEMENTS and that USER shall be the lead agency with respect to any and all CEQA compliance related to the IMPROVEMENTS. In addition to its other indemnification obligations as specified below, USER hereby agrees to indemnify, defend and hold harmless COUNTY OF LOS ANGELES and their elected and appointed officers, employees and agents from and against any and all claims and/or actions related to the IMPROVEMENTS that may be asserted by any third party or public agency alleging violations of CEQA or the CEQA Guidelines.
- 2.2. USER shall bear all costs in connection with the construction of the IMPROVEMENTS, including preparation of plans and specifications and all construction costs and expenses.
- 2.3. Prior to commencement of any construction activity on PREMISES by or on behalf of USER, USER shall submit the plans and specification for the IMPROVEMENTS to, and shall apply for and obtain a permit from, the Construction Division, Subdivision and Permits Unit, of the Los Angeles County Department of Public Works. USER shall also obtain COUNTY'S prior written approval, should USER propose to make any changes to the approved plans and specifications.
- 2.4. Upon completion of the construction of the IMPROVEMENTS, USER shall provide COUNTY with approved As-Built plans.
- 2.5. USER shall keep, inspect and maintain the PREMISES and the IMPROVEMENTS in a safe, clean, and orderly condition at all times during the term of this Use Agreement and shall not permit trash and

debris including but not limited to, rubbish, tin cans, bottles and garbage, to accumulate at any time, nor shall USER commit, suffer, or permit any waste on the PREMISES or IMPROVEMENTS or permit any acts to be done in violation of any laws or ordinances thereon.

- 2.6. USER shall remove graffiti from the PREMISES and IMPROVEMENTS and any other walk, fences, and signs which are located within the PREMISES, in accordance with the following time periods:
 - a. Vulgar graffiti (i.e. profane, obscene, or racist) shall be removed within 24 hours, Monday through Friday.
 - b. All other graffiti shall be removed within 72 hours, Monday through Friday.
- 2.7. USER shall replace or repair any property of COUNTY that becomes damaged by USER or any person entering the PREMISES at USER'S invitation or with the consent of the USER, either expressed or implied, within a reasonable time, to the satisfaction of the COUNTY or shall compensate the COUNTY for the damage within thirty (30) days of billing.

SECTION 3. Term

- 3.1. The term of this Use Agreement shall be for twenty-five (25) years (Initial Term), subject to the COUNTY's right to terminate USER'S use as provided for in Section 4, below.
- 3.2. This Use Agreement shall expire at the end of the Initial Term provided, however, that COUNTY may extend the term of this Use Agreement, beyond the Initial Term, subject to such terms and conditions as it deems appropriate, upon receipt of a written request from USER, no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term.

SECTION 4. Termination of Use

- 4.1. COUNTY shall have the right to cancel and terminate USER'S use of PREMISES, pursuant to this Use Agreement, by giving USER at least sixty (60) days prior written notice.
- 4.2. COUNTY shall have the right to cancel and terminate USER'S use of PREMISES, pursuant to this Use Agreement by given USER at least 30 days prior written notice, if USER breaches any term or condition of this Use Agreement.
- 4.3. COUNTY shall have the right to immediately cancel and terminate USER'S use of PREMISES, pursuant to this Use Agreement, or in the

COUNTY'S sole discretion, to temporarily suspend such use, in the event COUNTY determines, in good faith, that it is necessary for COUNTY to enter and take exclusive possession of PREMISES in order respond to an emergency, as defined in Public Contract Code Section 1102.

- 4.4. USER shall have the right to cancel and terminate its use of PREMISES pursuant to this Use Agreement for any reason by giving COUNTY at least sixty (60) days prior written notice.

SECTION 5. Removal of Improvements and Restoration of Premises

- 5.1. Upon the expiration or sooner termination of this Use Agreement, USER shall, at its own expense, remove the IMPROVEMENTS and restore the PREMISES to a condition similar or better than that which existed on the effective date of this Use Agreement, reasonable wear and tear excepted.
- 5.2. If USER fails to remove the IMPROVEMENTS and restore the PREMISES within thirty (30) days of the expiration of this Use Agreement, or sooner termination of USER'S use of PREMISES pursuant to this Use Agreement, COUNTY may remove the IMPROVEMENTS.
- 5.3. If COUNTY removes the IMPROVEMENTS pursuant to subsection 5.2, COUNTY shall submit a billing invoice to USER indicating the costs and expenses incurred by COUNTY in connection with the removal of the IMPROVEMENTS and USER shall reimburse COUNTY all such costs and expenses within thirty (30) days of the billing invoice.

SECTION 6. Miscellaneous Terms and Conditions

6.1. Indemnification

- 6.1.1. In accordance with Government Code Section 895.4, COUNTY and USER agree to apportion responsibility and indemnification notwithstanding any other provision of law as follows:

- 6.1.1.1. USER shall indemnify, defend, and hold COUNTY, and their respective officers, employees, and agents harmless from and against any claims, demands, liability, damages, costs, and expenses; including, without limitation, involving bodily injury, death, or personal injury of any person or property damage of any nature whatsoever, arising from or related to the construction, reconstruction, maintenance, operation, or removal of the IMPROVEMENTS or USER'S use of the PREMISES.

- 6.1.1.2. COUNTY shall indemnify, defend, and hold USER, and its officers, employees and agents harmless from and against any claims, demands, liability, damages, costs, and

expenses; including, without limitation, involving bodily injury, death, or personal injury of any person or property damage of any nature whatsoever, arising from or in connection with the construction, reconstruction, maintenance, operation, or removal of any IMPROVEMENTS constructed or maintained by COUNTY on, above, or under the PREMISES or arising from any and all uses of the PREMISES by COUNTY.

6.1.2. USER releases COUNTY and waives all right to damages for any loss, costs, or expenses USER may sustain as a result of any damage to or destruction of the IMPROVEMENTS or to the PREMISES attributable to use by the COUNTY'S TENANT'S.

6.1.2. Each party to this Use Agreement shall include the other within the protection of any indemnification clause contained in any future contracts relating to the PREMISES and COUNTY shall include such an indemnity obligation on any future contract with COUNTY'S TENANTS during the term of this Use Agreement.

6.2. Without limiting USER's indemnification of the COUNTY, USER shall procure and maintain in full force and effect during the term of this Use Agreement, insurance policies providing for the following insurance coverage:

- ▣ Comprehensive general liability and property damage coverage with a combined single limit liability in the amount of not less than TWO MILLION DOLLARS (\$2,000,000), per occurrence.
- ▣ Worker's Compensation coverage in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the COUNTY and USER against any loss, claim or damage arising from any injuries or occupation diseases occurring to any worker employed by or any person retained by USER in the course of carrying out the work or services contemplated in this Use Agreement.
- ▣ The County of Los Angeles, its governing board, officers, agents, contractors, and employees shall be named as Additional Insureds on all policies of liability insurance. USER shall furnish to COUNTY a Policy of Insurance evidencing USER's insurance coverage no later than (10) working days after execution of this Use Agreement, but before USER takes possession of the PREMISES. Upon renewal of said policy USER shall furnish to COUNTY a Certificate evidencing USER'S continued insurance coverage as required herein.

The COUNTY may accept, should USER elect to provide, a Certificate of Self-Insurance. The limits of such self-insurance coverage shall meet or exceed those stated herein. The COUNTY understands and acknowledges that the CITY is a public entity and is a member of the California Joint Powers Insurance Authority (JPIA), pursuant to a joint powers agreement, in place of maintaining regular policies of insurance. The CITY represents that such status constitutes satisfactory compliance with the COUNTY'S insurance requirements, and COUNTY accepts such representation upon receipt of a letter from the JPIA evidencing said coverage. In the event the CITY decides to change its insurance status, the CITY agrees to provide the COUNTY with thirty (30) days advance written notice of the effective date of this change in status. Thereafter, the CITY agrees to provide the COUNTY with appropriate evidence of insurance coverage(s).

- 6.3. USER and COUNTY shall have no financial obligation to each other under this Use Agreement, except as herein expressly provided.
- 6.4. The parties expressly recognize and intend that in consideration of this Use Agreement which is solely for USER's benefit, that COUNTY is not to incur any liability whatsoever, for any injury, death, or property damage arising from any use of the PREMISES or the IMPROVEMENTS by persons who gain entry through openings or areas provided for USER's use.
- 6.5. COUNTY, its Board, any authorized officer, engineer, employee, contractor, through its agents or representatives, shall have full right and authority to enter in and upon PREMISES at any and all reasonable times during the term of this Use Agreement all without interference or hindrance by USER, its agents, officers, contractors, employees, or representatives for the purpose of inspecting the same and to serve or post any notice required or permitted by law for protection of any right or interest of COUNTY.
- 6.6. Except as to fuels, lubricants and products associated with motorized vehicles, equipment, gardening or maintenance-related substances, or all of the above, USER shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the PREMISES without the prior written consent of the COUNTY which consent shall not be unreasonably denied. In the event of spillage, leakage or escape or any hazardous substance onto the PREMISES, USER shall immediately notify COUNTY by calling (800) 675-4357. If the spillage, leakage or escape was caused by USER, USER shall promptly remove any such substance from the PREMISES to the COUNTY's satisfaction. In addition to removing any of USER's hazardous substances, USER shall be liable

for and reimburse COUNTY for any and all cost and expenses that COUNTY may incur or suffer as a result thereof. Such responsibility shall include cost or expenses as COUNTY may incur by reason of Federal, State, local or other authoritative agency's laws and regulations. Notwithstanding the foregoing, USER shall have no responsibility regarding any spill, leak or escape associated with any of COUNTY's TENANTS, licensees or easement holders.

- 6.7. Any notice to be given or document to be delivered by COUNTY or USER to the other party may be delivered in person to either party or by private courier or may be deposited in the United States mail, duly registered or certified, with postage prepaid and addressed to the party for whom intended as follows:

To COUNTY:

County of Los Angeles
Attention: Survey/Mapping & Property Management Division
P.O. Box 1460
900 South Fremont Avenue
Alhambra, CA 91802-1460

tel.: (626) 458-7042 or (626) 458-7072; fax (626) 979-5322
[For Emergencies, contact (626) 458-HELP (4357)]

To USER:

City of Malibu
Attention: Reva Feldman
23815 Stuart Ranch Road
Malibu, CA 90265
(310) 456-2489

SECTION 7. Sale of Premises by the COUNTY

- 7.1. USER acknowledges the PREMISES is surplus to COUNTY's needs. In the event the COUNTY elects to sell the PREMISES, COUNTY shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Use Agreement.

ACKNOWLEDGMENTS

IN WITNESS WHEREOF, the County of Los Angeles, by order of its Board of Supervisors, has caused this Use Agreement to be subscribed by the Chair of the Board and the seal of said COUNTY to be affixed hereto and attested by its Executive Officer of the Board of Supervisors, and the City of Malibu by its duly authorized representative(s), have caused this Use Agreement to be executed.

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By: [Signature]
Deputy

USER:
CITY OF MALIBU,
a municipal corporation

By: [Signature] 9/8/10
Date

Approved as to Form: -

[Signature]
City Attorney

COUNTY:

COUNTY OF LOS ANGELES
a body corporate and politic

By: [Signature]
Mayor, Board of Supervisors



ATTEST:

Sachi A. Hamai, Executive Officer
of the Board of Supervisors of the County of Los Angeles

By: [Signature]
Deputy

Approved as to Form:
ANDREA SHERIDAN ORDIN
County Counsel

By: [Signature]
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#27

MAR 1 2011

[Signature]
SACHI A. HAMAI
EXECUTIVE OFFICER

77484

ACKNOWLEDGMENT

State of California

County of Los Angeles

On Sept. 8, 2010 before me, Christy Ann Rector Notary Public
(here insert name and title of the officer)

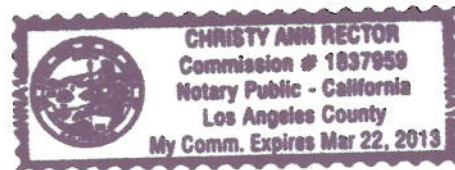
personally appeared James Edward Thorsen

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Christy Ann Rector



(Seal)

OPTIONAL INFORMATION

Description or Title of the Attached Document:

Number of Pages: _____ Document Date: _____

Capacity Claimed by Signer(s):

- ☐ Individual(s)
- ☐ Corporate Officer(s): _____
- ☐ Trustee(s)
- ☐ Attorney-in-Fact
- ☐ Partner(s)
- ☐ Other: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 6, 1987, the Board of Supervisors for the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts adopted a resolution pursuant to Section 25103 of the Government Code that authorized the use of facsimile signatures of the Mayor of the Board on all papers, documents, or instruments requiring the Mayor's signature.


The undersigned hereby certifies that on this 1st day of March, 2011, the facsimile signature of MIKE ANTONOVICH, Mayor of the Board of Supervisors of the COUNTY OF LOS ANGELES, was affixed hereto as the official execution of this document. The undersigned further certifies that on this date a copy of the document was delivered to the Mayor of the Board of Supervisors of the COUNTY OF LOS ANGELES.

In witness whereof, I have also hereunto set my hand and affixed my official seal the day and year above written.



(COUNTY-SEAL)

SACHI A. HAMAI, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By 
Deputy

APPROVED AS TO FORM

ANDREA SHERIDAN ORDIN
County Counsel

By 
Deputy